
HOUSE BILL 1493

State of Washington

61st Legislature

2009 Regular Session

By Representatives Pedersen, Hinkle, Cody, Clibborn, Morrell, Campbell, Green, DeBolt, Seaquist, Nelson, Moeller, Ericks, Appleton, Hudgins, Hasegawa, Conway, Kagi, and Kenney

Read first time 01/21/09. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to prohibiting the use of patient health care
2 information for prescription drug marketing; amending RCW 70.02.010,
3 70.02.050, 70.02.170, and 19.86.090; adding a new section to chapter
4 70.02 RCW; creating a new section; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

7 (a) The state of Washington has clear and long-standing interests
8 in maximizing the health and well-being of its residents, safeguarding
9 the confidentiality and integrity of the doctor-patient relationship,
10 combatting undue influence of marketing on health care choices, and
11 containing health care costs;

12 (b) To further its substantial interest in the health and
13 well-being of its residents and in containing health care costs, the
14 state of Washington has shown a strong commitment to evidence-based
15 care and cost-effective health purchasing. Washington state has been
16 most active in this regard with respect to prescription drug purchasing
17 focused on clinical and cost-effectiveness, including the Washington
18 evidence-based prescription drug program and the state preferred drug
19 list under RCW 70.14.050, the prescription drug purchasing consortium

1 under RCW 70.14.060, and both generic and therapeutic drug substitution
2 under chapter 69.41 RCW. In addition, the medicaid program is engaged
3 in numerous efforts to improve the quality of, and reduce variability
4 in, prescribing of pain management and mental health medications. The
5 state also aggressively seeks supplemental rebates to lower drug costs
6 in the medicaid program;

7 (c) Health care providers in Washington who write prescriptions for
8 their patients have a strong interest in the integrity of the
9 patient-provider relationship and a reasonable expectation that the
10 information in their prescriptions will not be used for purposes other
11 than the filling and processing of the payment for that prescription;

12 (d) It is estimated that the pharmaceutical industry spends between
13 thirty billion dollars and fifty-four billion dollars annually on
14 marketing pharmaceuticals in the United States. Marketing programs are
15 designed to increase sales, income, and profit. Progress toward these
16 goals can come at the expense of evidence-based care, efforts to
17 contain health care costs, and sometimes the health of individual
18 patients; and

19 (e) The use of patient identifiable prescription data to market
20 prescription drugs to patients runs counter to Washington's strong
21 commitment to both evidence-based care and cost-effective health
22 purchasing. This act is necessary to realize the goals of the programs
23 and activities undertaken by the state of Washington to implement
24 evidence-based care and cost-effective health purchasing and to
25 preserve the integrity of the patient-prescriber relationship.

26 (2) It is the intent of the legislature to protect the
27 confidentiality of prescribing information, safeguard the integrity of
28 the doctor-patient relationship, and contain health care costs by
29 prohibiting conduct involving the sale, disclosure, and use of
30 individual patient prescription drug data for marketing purposes.

31 **Sec. 2.** RCW 70.02.010 and 2006 c 235 s 2 are each amended to read
32 as follows:

33 The definitions in this section apply throughout this chapter
34 unless the context clearly requires otherwise.

35 (1) "Audit" means an assessment, evaluation, determination, or
36 investigation of a health care provider by a person not employed by or
37 affiliated with the provider to determine compliance with:

1 (a) Statutory, regulatory, fiscal, medical, or scientific
2 standards;

3 (b) A private or public program of payments to a health care
4 provider; or

5 (c) Requirements for licensing, accreditation, or certification.

6 (2) "Directory information" means information disclosing the
7 presence, and for the purpose of identification, the name, location
8 within a health care facility, and the general health condition of a
9 particular patient who is a patient in a health care facility or who is
10 currently receiving emergency health care in a health care facility.

11 (3) "Federal, state, or local law enforcement authorities" means an
12 officer of any agency or authority in the United States, a state, a
13 tribe, a territory, or a political subdivision of a state, a tribe, or
14 a territory who is empowered by law to: (a) Investigate or conduct an
15 official inquiry into a potential criminal violation of law; or (b)
16 prosecute or otherwise conduct a criminal proceeding arising from an
17 alleged violation of law.

18 (4) "General health condition" means the patient's health status
19 described in terms of "critical," "poor," "fair," "good," "excellent,"
20 or terms denoting similar conditions.

21 (5) "Health care" means any care, service, or procedure provided by
22 a health care provider:

23 (a) To diagnose, treat, or maintain a patient's physical or mental
24 condition; or

25 (b) That affects the structure or any function of the human body.

26 (6) "Health care facility" means a hospital, clinic, nursing home,
27 laboratory, office, or similar place where a health care provider
28 provides health care to patients.

29 (7) "Health care information" means any information, whether oral
30 or recorded in any form or medium, that identifies or can readily be
31 associated with the identity of a patient and directly relates to the
32 patient's health care, including a patient's deoxyribonucleic acid and
33 identified sequence of chemical base pairs. The term includes any
34 required accounting of disclosures of health care information.

35 (8) "Health care operations" means any of the following activities
36 of a health care provider, health care facility, or third-party payor
37 to the extent that the activities are related to functions that make an

1 entity a health care provider, a health care facility, or a third-party
2 payor:

3 (a) Conducting: Quality assessment and improvement activities,
4 including outcomes evaluation and development of clinical guidelines,
5 if the obtaining of generalizable knowledge is not the primary purpose
6 of any studies resulting from such activities; population-based
7 activities relating to improving health or reducing health care costs,
8 protocol development, case management and care coordination, contacting
9 of health care providers and patients with information about treatment
10 alternatives; and related functions that do not include treatment;

11 (b) Reviewing the competence or qualifications of health care
12 professionals, evaluating practitioner and provider performance and
13 third-party payor performance, conducting training programs in which
14 students, trainees, or practitioners in areas of health care learn
15 under supervision to practice or improve their skills as health care
16 providers, training of nonhealth care professionals, accreditation,
17 certification, licensing, or credentialing activities;

18 (c) Underwriting, premium rating, and other activities relating to
19 the creation, renewal, or replacement of a contract of health insurance
20 or health benefits, and ceding, securing, or placing a contract for
21 reinsurance of risk relating to claims for health care, including stop-
22 loss insurance and excess of loss insurance, if any applicable legal
23 requirements are met;

24 (d) Conducting or arranging for medical review, legal services, and
25 auditing functions, including fraud and abuse detection and compliance
26 programs;

27 (e) Business planning and development, such as conducting cost-
28 management and planning-related analyses related to managing and
29 operating the health care facility or third-party payor, including
30 formulary development and administration, development, or improvement
31 of methods of payment or coverage policies; and

32 (f) Business management and general administrative activities of
33 the health care facility, health care provider, or third-party payor
34 including, but not limited to:

35 (i) Management activities relating to implementation of and
36 compliance with the requirements of this chapter;

37 (ii) Customer service, including the provision of data analyses for

1 policy holders, plan sponsors, or other customers, provided that health
2 care information is not disclosed to such policy holder, plan sponsor,
3 or customer;

4 (iii) Resolution of internal grievances;

5 (iv) The sale, transfer, merger, or consolidation of all or part of
6 a health care provider, health care facility, or third-party payor with
7 another health care provider, health care facility, or third-party
8 payor or an entity that following such activity will become a health
9 care provider, health care facility, or third-party payor, and due
10 diligence related to such activity; and

11 (v) Consistent with applicable legal requirements, creating
12 deidentified health care information or a limited dataset and fund-
13 raising for the benefit of the health care provider, health care
14 facility, or third-party payor.

15 (9) "Health care provider" means a person who is licensed,
16 certified, registered, or otherwise authorized by the law of this state
17 to provide health care in the ordinary course of business or practice
18 of a profession.

19 (10) "Health carrier" has the same meaning as defined in RCW
20 48.43.005.

21 (11) "Health plan" or "health benefit plan" has the same meaning as
22 defined in RCW 48.43.005.

23 (12) "Institutional review board" means any board, committee, or
24 other group formally designated by an institution, or authorized under
25 federal or state law, to review, approve the initiation of, or conduct
26 periodic review of research programs to assure the protection of the
27 rights and welfare of human research subjects.

28 ~~((11))~~ (13) "Maintain," as related to health care information,
29 means to hold, possess, preserve, retain, store, or control that
30 information.

31 ~~((12))~~ (14) "Marketing" means making a communication about a
32 product or service that encourages recipients of the communication to
33 purchase or use the product or service. "Marketing" does not include
34 any of the following:

35 (a) Communications, including those made under (b) of this
36 subsection, made orally or in writing by an entity with access to the
37 recipient's health information if the entity making the communication

1 does not receive direct or indirect remuneration including, but not
2 limited to, gifts, fees, payments, subsidies, or other economic
3 benefits, from a third party for making the communication;

4 (b) Communications made to current enrollees by the carrier, or to
5 a patient by that patient's primary provider solely for the purpose of
6 describing a provider's participation in an existing health care
7 provider network or health plan network to which the enrollees or
8 patient already subscribes;

9 (c) Communications made to current enrollees by the carrier, or to
10 a current patient by that patient's primary provider solely for the
11 purpose of describing if, and the extent to which, a product or
12 service, or payment for a product or service, is provided by a
13 provider, contractor, or plan or is included in a health benefit plan
14 to which the enrollees or the patient already subscribes; and

15 (d) Communications made to plan enrollees describing the
16 availability of more cost-effective pharmaceuticals, such as generic
17 drugs.

18 (15) "Patient" means an individual who receives or has received
19 health care. The term includes a deceased individual who has received
20 health care.

21 ~~((+13))~~ (16) "Payment" means:

22 (a) The activities undertaken by:

23 (i) A third-party payor to obtain premiums or to determine or
24 fulfill its responsibility for coverage and provision of benefits by
25 the third-party payor; or

26 (ii) A health care provider, health care facility, or third-party
27 payor, to obtain or provide reimbursement for the provision of health
28 care; and

29 (b) The activities in (a) of this subsection that relate to the
30 patient to whom health care is provided and that include, but are not
31 limited to:

32 (i) Determinations of eligibility or coverage, including
33 coordination of benefits or the determination of cost-sharing amounts,
34 and adjudication or subrogation of health benefit claims;

35 (ii) Risk adjusting amounts due based on enrollee health status and
36 demographic characteristics;

37 (iii) Billing, claims management, collection activities, obtaining

1 payment under a contract for reinsurance, including stop-loss insurance
2 and excess of loss insurance, and related health care data processing;

3 (iv) Review of health care services with respect to medical
4 necessity, coverage under a health plan, appropriateness of care, or
5 justification of charges;

6 (v) Utilization review activities, including precertification and
7 preauthorization of services, and concurrent and retrospective review
8 of services; and

9 (vi) Disclosure to consumer reporting agencies of any of the
10 following health care information relating to collection of premiums or
11 reimbursement:

12 (A) Name and address;

13 (B) Date of birth;

14 (C) Social security number;

15 (D) Payment history;

16 (E) Account number; and

17 (F) Name and address of the health care provider, health care
18 facility, and/or third-party payor.

19 ((+14)) (17) "Person" means an individual, corporation, business
20 trust, estate, trust, partnership, association, joint venture,
21 government, governmental subdivision or agency, or any other legal or
22 commercial entity.

23 ((+15)) (18) "Reasonable fee" means the charges for duplicating or
24 searching the record, but shall not exceed sixty-five cents per page
25 for the first thirty pages and fifty cents per page for all other
26 pages. In addition, a clerical fee for searching and handling may be
27 charged not to exceed fifteen dollars. These amounts shall be adjusted
28 biennially in accordance with changes in the consumer price index, all
29 consumers, for Seattle-Tacoma metropolitan statistical area as
30 determined by the secretary of health. However, where editing of
31 records by a health care provider is required by statute and is done by
32 the provider personally, the fee may be the usual and customary charge
33 for a basic office visit.

34 ((+16)) (19) "Third-party payor" means an insurer regulated under
35 Title 48 RCW authorized to transact business in this state or other
36 jurisdiction, including a health care service contractor, and health
37 maintenance organization; or an employee welfare benefit plan; or a
38 state or federal health benefit program.

1 (~~(17)~~) (20) "Treatment" means the provision, coordination, or
2 management of health care and related services by one or more health
3 care providers or health care facilities, including the coordination or
4 management of health care by a health care provider or health care
5 facility with a third party; consultation between health care providers
6 or health care facilities relating to a patient; or the referral of a
7 patient for health care from one health care provider or health care
8 facility to another.

9 **Sec. 3.** RCW 70.02.050 and 2007 c 156 s 12 are each amended to read
10 as follows:

11 (1) Except to the extent that use or disclosure of health care
12 information is limited under section 4 of this act, a health care
13 provider or health care facility may disclose health care information
14 about a patient without the patient's authorization to the extent a
15 recipient needs to know the information, if the disclosure is:

16 (a) To a person who the provider or facility reasonably believes is
17 providing health care to the patient;

18 (b) To any other person who requires health care information for
19 health care education, or to provide planning, quality assurance, peer
20 review, or administrative, legal, financial, actuarial services to, or
21 other health care operations for or on behalf of the health care
22 provider or health care facility; or for assisting the health care
23 provider or health care facility in the delivery of health care and the
24 health care provider or health care facility reasonably believes that
25 the person:

26 (i) Will not use or disclose the health care information for any
27 other purpose; and

28 (ii) Will take appropriate steps to protect the health care
29 information;

30 (c) To any other health care provider or health care facility
31 reasonably believed to have previously provided health care to the
32 patient, to the extent necessary to provide health care to the patient,
33 unless the patient has instructed the health care provider or health
34 care facility in writing not to make the disclosure;

35 (d) To any person if the health care provider or health care
36 facility reasonably believes that disclosure will avoid or minimize an

1 imminent danger to the health or safety of the patient or any other
2 individual, however there is no obligation under this chapter on the
3 part of the provider or facility to so disclose;

4 (e) To immediate family members of the patient, including a
5 patient's state registered domestic partner, or any other individual
6 with whom the patient is known to have a close personal relationship,
7 if made in accordance with good medical or other professional practice,
8 unless the patient has instructed the health care provider or health
9 care facility in writing not to make the disclosure;

10 (f) To a health care provider or health care facility who is the
11 successor in interest to the health care provider or health care
12 facility maintaining the health care information;

13 (g) For use in a research project that an institutional review
14 board has determined:

15 (i) Is of sufficient importance to outweigh the intrusion into the
16 privacy of the patient that would result from the disclosure;

17 (ii) Is impracticable without the use or disclosure of the health
18 care information in individually identifiable form;

19 (iii) Contains reasonable safeguards to protect the information
20 from redisclosure;

21 (iv) Contains reasonable safeguards to protect against identifying,
22 directly or indirectly, any patient in any report of the research
23 project; and

24 (v) Contains procedures to remove or destroy at the earliest
25 opportunity, consistent with the purposes of the project, information
26 that would enable the patient to be identified, unless an institutional
27 review board authorizes retention of identifying information for
28 purposes of another research project;

29 (h) To a person who obtains information for purposes of an audit,
30 if that person agrees in writing to:

31 (i) Remove or destroy, at the earliest opportunity consistent with
32 the purpose of the audit, information that would enable the patient to
33 be identified; and

34 (ii) Not to disclose the information further, except to accomplish
35 the audit or report unlawful or improper conduct involving fraud in
36 payment for health care by a health care provider or patient, or other
37 unlawful conduct by the health care provider;

1 (i) To an official of a penal or other custodial institution in
2 which the patient is detained;

3 (j) To provide directory information, unless the patient has
4 instructed the health care provider or health care facility not to make
5 the disclosure;

6 (k) To fire, police, sheriff, or another public authority, that
7 brought, or caused to be brought, the patient to the health care
8 facility or health care provider if the disclosure is limited to the
9 patient's name, residence, sex, age, occupation, condition, diagnosis,
10 estimated or actual discharge date, or extent and location of injuries
11 as determined by a physician, and whether the patient was conscious
12 when admitted;

13 (l) To federal, state, or local law enforcement authorities and the
14 health care provider, health care facility, or third-party payor
15 believes in good faith that the health care information disclosed
16 constitutes evidence of criminal conduct that occurred on the premises
17 of the health care provider, health care facility, or third-party
18 payor;

19 (m) To another health care provider, health care facility, or
20 third-party payor for the health care operations of the health care
21 provider, health care facility, or third-party payor that receives the
22 information, if each entity has or had a relationship with the patient
23 who is the subject of the health care information being requested, the
24 health care information pertains to such relationship, and the
25 disclosure is for the purposes described in RCW 70.02.010(8) (a) and
26 (b); or

27 (n) For payment.

28 (2) A health care provider shall disclose health care information
29 about a patient without the patient's authorization if the disclosure
30 is:

31 (a) To federal, state, or local public health authorities, to the
32 extent the health care provider is required by law to report health
33 care information; when needed to determine compliance with state or
34 federal licensure, certification or registration rules or laws; or when
35 needed to protect the public health;

36 (b) To federal, state, or local law enforcement authorities to the
37 extent the health care provider is required by law;

1 (c) To federal, state, or local law enforcement authorities, upon
2 receipt of a written or oral request made to a nursing supervisor,
3 administrator, or designated privacy official, in a case in which the
4 patient is being treated or has been treated for a bullet wound,
5 gunshot wound, powder burn, or other injury arising from or caused by
6 the discharge of a firearm, or an injury caused by a knife, an ice
7 pick, or any other sharp or pointed instrument which federal, state, or
8 local law enforcement authorities reasonably believe to have been
9 intentionally inflicted upon a person, or a blunt force injury that
10 federal, state, or local law enforcement authorities reasonably believe
11 resulted from a criminal act, the following information, if known:

12 (i) The name of the patient;

13 (ii) The patient's residence;

14 (iii) The patient's sex;

15 (iv) The patient's age;

16 (v) The patient's condition;

17 (vi) The patient's diagnosis, or extent and location of injuries as
18 determined by a health care provider;

19 (vii) Whether the patient was conscious when admitted;

20 (viii) The name of the health care provider making the
21 determination in (c)(v), (vi), and (vii) of this subsection;

22 (ix) Whether the patient has been transferred to another facility;
23 and

24 (x) The patient's discharge time and date;

25 (d) To county coroners and medical examiners for the investigations
26 of deaths;

27 (e) Pursuant to compulsory process in accordance with RCW
28 70.02.060.

29 (3) All state or local agencies obtaining patient health care
30 information pursuant to this section shall adopt rules establishing
31 their record acquisition, retention, and security policies that are
32 consistent with this chapter.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.02 RCW
34 to read as follows:

35 Notwithstanding allowable disclosures under RCW 70.02.050, and
36 unless expressly authorized by the patient as provided in RCW
37 70.02.030, (1) health care providers, including pharmacies and entities

1 licensed under chapter 18.64 RCW, (2) health carriers, (3) pharmacy
2 benefit managers, or (4) the business associates, subsidiaries, or
3 affiliates of the entities set out in subsections (1) through (3) of
4 this section, shall not intentionally share, sell, or otherwise use any
5 health care information for the purpose of marketing prescription drugs
6 to patients.

7 **Sec. 5.** RCW 70.02.170 and 1991 c 335 s 801 are each amended to
8 read as follows:

9 (1) A person who has complied with this chapter may maintain an
10 action for the relief provided in this section against a health care
11 provider or facility who has not complied with this chapter.

12 (2) The court may order the health care provider or other person to
13 comply with this chapter. Such relief may include actual damages, but
14 shall not include consequential or incidental damages. The court shall
15 award reasonable attorneys' fees and all other expenses reasonably
16 incurred to the prevailing party.

17 (3) Any action under this chapter is barred unless the action is
18 commenced within two years after the cause of action is discovered.

19 (4) Except to the extent provided otherwise in subsection (5) of
20 this section, a violation of this chapter shall not be deemed a
21 violation of the consumer protection act, chapter 19.86 RCW.

22 (5) In addition to any other remedy provided by law, the
23 legislature finds that the practices covered by section 4 of this act
24 are matters vitally affecting the public interest for the purpose of
25 applying the consumer protection act, chapter 19.86 RCW. A violation
26 of section 4 of this act is not reasonable in relation to the
27 development and preservation of business and is an unfair or deceptive
28 act in trade or commerce and an unfair method of competition for the
29 purpose of applying the consumer protection act, chapter 19.86 RCW.

30 **Sec. 6.** RCW 19.86.090 and 2007 c 66 s 2 are each amended to read
31 as follows:

32 (1) Except to the extent provided in subsection (2) of this
33 section, any person who is injured in his or her business or property
34 by a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or
35 19.86.060, or any person so injured because he or she refuses to accede
36 to a proposal for an arrangement which, if consummated, would be in

1 violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, may
2 bring a civil action in the superior court to enjoin further
3 violations, to recover the actual damages sustained by him or her, or
4 both, together with the costs of the suit, including a reasonable
5 attorney's fee, and the court may in its discretion, increase the award
6 of damages to an amount not to exceed three times the actual damages
7 sustained: PROVIDED, That such increased damage award for violation of
8 RCW 19.86.020 may not exceed ten thousand dollars: PROVIDED FURTHER,
9 That such person may bring a civil action in the district court to
10 recover his or her actual damages, except for damages which exceed the
11 amount specified in RCW 3.66.020, and the costs of the suit, including
12 reasonable attorney's fees. The district court may, in its discretion,
13 increase the award of damages to an amount not more than three times
14 the actual damages sustained, but such increased damage award shall not
15 exceed the amount specified in RCW 3.66.020. For the purpose of this
16 section, "person" shall include the counties, municipalities, and all
17 political subdivisions of this state.

18 (2)(a) Any person who is injured by a violation of section 4 of
19 this act may bring a civil action in the superior court to enjoin
20 further violations, to recover the greater of one thousand dollars or
21 actual damages sustained by him or her, or both, together with the
22 costs of the suit, including reasonable attorneys' fees. The court
23 may, in its discretion, increase the award of damages to an amount not
24 to exceed the greater of three thousand dollars or three times the
25 actual damages sustained.

26 (b) Each prescription drug marketing communication sent or conveyed
27 to a patient shall constitute a separate violation of section 4 of this
28 act.

29 (3) Whenever the state of Washington is injured, directly or
30 indirectly, by reason of a violation of RCW 19.86.030, 19.86.040,
31 19.86.050, or 19.86.060, it may sue therefor in the superior court to
32 recover the actual damages sustained by it, whether direct or indirect,
33 and to recover the costs of the suit including a reasonable attorney's
34 fee.

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